

Xavier demetri nailing
FULL NAME

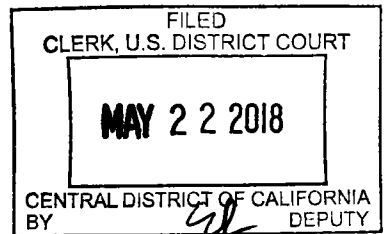
COMMITTED NAME (if different)

P.O. Box 904
FULL ADDRESS INCLUDING NAME OF INSTITUTION

AVENAL CA. 93204

Avenal State Prison

PRISON NUMBER (if applicable)



RELATED DDJ

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Xavier D. nailing

PLAINTIFF,

v.

JACKIE LACEY, EVELIS DEGARMO,
BROCK LUNSFORD
DEFENDANT(S).

CASE NUMBER

LA 18CV04327-AG(JC)
To be supplied by the Clerk

CIVIL RIGHTS COMPLAINT

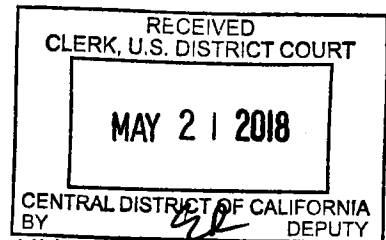
PURSUANT TO (Check one)

☒ 42 U.S.C. § 1983

☐ Bivens v. Six Unknown Agents 403 U.S. 388 (1971)

A. PREVIOUS LAWSUITS

1. Have you brought any other lawsuits in a federal court while a prisoner: ☒ Yes ☐ No
2. If your answer to "1." is yes, how many? TWO



Describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on an attached piece of paper using the same outline.)

1. FEDERAL CIVIL CASE: 1:18-CV-00230-DAD-BAM
is a Property related Due Process and Equal Protection Claim. AS well as
Disciplinary Proceeding Due Process and Equal Protection Claim. Defendant took
evidence of Los Angeles County Jail Officials violations of inmate civil rights
once Plaintiff in the Above entitled case Filed a CDCR 602 grievance's
That as well as his Property grievance came up missing. Defendant then
violated there own interdepartmental Policy of the Mental Health Delivery SYSTEM
and a Federal Court Order Driven From. Coleman v. Brown Federal Case.
2. Federal Civil Case: 1:18-CV-00565-LJO-EPG is a Threat to safety
Eight Amendment civil rights violation Claim. Defendants interviewed Plaintiff
at his Classification Committee and agreed to falsely brand The Plaintiff a
sex offender. The Plaintiff's Correctional Case Counselor was charged with
the duty of reviewing case files and records prior to an agreement of
any and all case factor's specially any case factor's that would place
the Plaintiff or the institution in danger. Defendant did in fact place
a charge after the case factor: sex that was dismissed and
the charge WAS Not even a crime of sex: Disorderly conduct.

CIVIL RIGHTS COMPLAINT

- a. Parties to this previous lawsuit:

Plaintiff Xavier Dmetri Nailing, Xavier NailingDefendants J. COTA, R. NDOH, K. BAY, R. TIMENEZ.F. FELICIANO, G. BAKER, C. WADE, J. ACTIS, B. KEYFAUVER, Weston Phillips

- b. Court
- UNITED STATES Eastern district Fresno

- c. Docket or case number
- 1:18-CV-00565-LJO-EPG, 1:18-CV-00230-DAD-BAM

- d. Name of judge to whom case was assigned
- Lawrence O'Neill, Barbara A. McAuliffe

- e. Disposition (For example: Was the case dismissed? If so, what was the basis for dismissal? Was it appealed? Is it still pending?)
- Both still Pending

- f. Issues raised:
- Threat to Safety, Property and Disciplinary Proceeding

- g. Approximate date of filing lawsuit:
- 2-15-2018 and 4-26-2018

- h. Approximate date of disposition
- unknown

B. EXHAUSTION OF ADMINISTRATIVE REMEDIES

1. Is there a grievance procedure available at the institution where the events relating to your current complaint occurred?
- ☒
- Yes
- ☐
- No

2. Have you filed a grievance concerning the facts relating to your current complaint?
- ☒
- Yes
- ☐
- No

If your answer is no, explain why not _____

3. Is the grievance procedure completed?
- ☐
- Yes
- ☒
- No

If your answer is no, explain why not CDCR has no Jurisdiction

4. Please attach copies of papers related to the grievance procedure.

C. JURISDICTIONThis complaint alleges that the civil rights of plaintiff Xavier d. Nailing
(print plaintiff's name)who presently resides at AVENAL State Prison P.O. Box 904 Avenal CA 93204
(mailing address or place of confinement)

were violated by the actions of the defendant(s) named below, which actions were directed against plaintiff at

AVENAL State Prison
(institution/city where violation occurred)

1. Defendant JACKIE LACEY resides or works at
(full name of first defendant)
320 West Temple Street Suite 540 Los Angeles, CA 90012
(full address of first defendant)
DISTRICT ATTORNEY OF LOS ANGELES
(defendant's position and title, if any)

JACKIE LACEY is the District Attorney of The County of Los Angeles
a County Official. Monroe v. Pape, 365 U.S. 167 (1961).

2. Defendant EVELIS M. DE GARMO resides or works at
(full name of first defendant)
320 West Temple Street Suite 540 Los Angeles, CA. 90012
(full address of first defendant)
Habeas Corpus Litigation Team Deputy
(defendant's position and title, if any)

EVELIS M. DEGARMO is a Deputy District Attorney for Los Angeles County and is an Official, *Monroe v. Pape*, 365 U.S. 167 (1961).

3. Defendant BROCK LUNSFORD resides or works at
(full name of first defendant)
320 West Temple Street Suite 540 Los Angeles, CA. 90012
(full address of first defendant)
Habeas Corpus Litigation Team Deputy ~~attorney~~ and agent
(defendant's position and title, if any) and Agent for Defendant DE GARMO

BROCK LUNSFORD is Employed by the District Attorneys Office of Los Angeles County and an Official. Monroe v. Pape, 365 U.S. 167 (1961)

D. CLAIMS*

CLAIM I

The following civil right has been violated:

14th Amendment Due Process Clause Defendants
 JACKIE LACEY, EVELIS M. DeGarmo, Brock Lunsford Filed a
 Subpoena Duces Tecum under the penalty of perjury while
 simultaneously filing a Request to Extension of ~~15~~ 57
 days of time. The Defendants Subpoena Duces Tecum
 state "THAT THE ABOVE DOCUMENTS ARE MATERIAL TO
 THE ISSUES INVOLVED IN THE CASE BY REASON OF
 THE FOLLOWING FACTS: NEEDED TO DETERMINE
 IF THE DEFENDANT POSES AN UNREASONABLE
 RISK TO PUBLIC SAFETY PURSUANT TO A RESENTENCING
 PROVIDED BY PENAL CODE SECTION 1170.126"
 DEFENDANTS SHOULD HAVE KNOWN THAT THE PLAINTIFF
 had file a Petition for Writ of Habeas Corpus under
 and or P.C. § 2900.5, subdivision (a) Not Proposition 36. Causing
 The Plaintiff to be over-detained & FALSELY imprisoned as of 04-21-2018

Supporting Facts: Include all facts you consider important. State the facts clearly, in your own words, and without
 citing legal authority or argument. Be certain you describe, in separately numbered paragraphs, exactly what each
 DEFENDANT (by name) did to violate your right.

ON 02/13/2018 Plaintiff sent his Petition to the court in Los Angeles
 it was filed on 02/22/2018. ON 04/05/2018 the Court, Non-party
 deponent and witness William C. RYAN order The Defendant
 to file a informal Response Exhibit A. ON 04/12/2018 The
 Defendant file A Subpoena Duces Tecum UNDER the penalty of
 Perjury and a Request to ~~extension~~ extend time until 06-15-2018.
 Exhibit B. ON 04/17/2018 Non-party deponent and witness
 William C. RYAN order The Defendant extension.
 The False Documents that were file are a clear violation
 of the LAW that violation caused The Plaintiff
 to be over Detained The court's was unaware that
 The Defendants Subpoena Duces Tecum was Fraudulent
 AS ~~the~~ the defendant file there request for an extension
 and ask for some of the same Document most of

*If there is more than one claim, describe the additional claim(s) on another attached piece of paper using the same
 outline.

1 which do not exist. UPON information and belief filed there
 2 57 day extension so to render the Defendant/Plaintiff's
 3 Petition moot Because Plaintiff's Current release from
 4 CDCR is 07-22-2018 Exhibit C. UPON information and
 5 belief Defendant JACKIE LACEY may have instructed, or
 6 directed Defendants BROCK LUNSFORD and EVELIS DeGARMO
 7 to falsely file the Subpoena DUCES TECUM Due to the
 8 fact that the Plaintiff sent the Defendant JACKIE
 9 LACEY a letter Certified mail in 2013 or 2014 stating that
 10 he is a witness in a case heard the Defendants Office
 11 was Prosecuting and that Plaintiff had knowledge that
 12 Sheriff deputies were directly involved in an Assault and
 13 Sexual Battery, this was at the time that Paul Tanaka
 14 Now a Convicted Federal Prisoner was running the
 15 Los Angeles County Jail. Defendant JACKIE LACEY
 16 was made fully aware by the Plaintiff of the Sheriff's
 17 department's involvement in that inhouse crime.
 18 ON MAY 1, 2018 Non-Party Deponent and witness William C.
 19 RYAN DENIED Plaintiff's Objections to the Defendants extension
 20 of time and Plaintiff's Notice Motion in amicus curiae. Exhibit
 21 C. Defendant is The District Attorney and is The County
 22 prosecutor of Los Angeles Defendants should have known
 23 that After Plaintiff was Prosecuted that on 11-17-2016
 24 in Dept 115 Plaintiff at that time a Defendant in Case
 25 BA441591 he was Placed on Formal Probation and give a
 26 Total of 261 days of custody Credit. ON 07-10-2017 Plaintiff
 27 Plaintiff was only given 226 days of Credit when he was
 28 Sent to Prison after spending and additional 64 days in

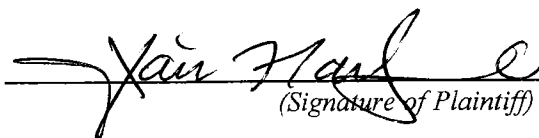
1 LA County Jail From 05/08/2017 untill his sentencing
2 on 07-10-2017 is a total of 64 days, 64 days added
3 to his Presentencing Credits on 11-17-2016 of 261 is
4 325 Plaintiff/The defendant at that time should have been
5 given. 325 minus the 226 Credit Plaintiff was given
6 is 122 days minus 17 days of Post sentencing
7 Credits is 95 days Plaintiff is owed. Plaintiff's
8 release date was and is 7-22-2018 at the time the
9 Defendant informal response ~~was~~ was Due 04-20-2018
10 as of 04-24-2018 Plaintiff became over-incarcerated.
11 Directly cause by Defendant filing false documents
12 as of the date of this Civil Rights Complaint the
13 Plaintiff will be falsely imprisoned for 22 days,
14 by the end of the current order Plaintiff will be
15 over ~~detaine~~ detained and falsely imprisoned for 52
16 days. The Defendant should have known that by
17 there action Plaintiff would sustain a Fourteenth
18 Amendment Due Process Violation.

E. REQUEST FOR RELIEF

I believe that I am entitled to the following specific relief:

(1) That this Court enter Judgment granting Plaintiff a declaration that the acts and omissions herein that are described violate the Plaintiff's rights under the UNITED STATES Constitution. (2) Compensatory damages in the amount of \$310.00 per day of over-incarceration. (3) That this case be referred to ADR Program.

05/16/2018
(Date)


(Signature of Plaintiff)

(8)

Exhibit A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**DEPT 100**

Date:	April 04, 2018	Judge	S. KADOHATA	Deputy Clerk
Honorable:	WILLIAM C. RYAN	Bailiff	NONE	Reporter
	NONE			

(Parties and Counsel checked if present)

BH011621
(L.A.S.C. Case No. BA441591)

In re,
XAVIER DMITRI NAILING,

Counsel for Petitioner:

Petitioner,

On Habeas Corpus

Counsel for Respondent:

Nature of Proceedings: REQUEST FOR INFORMAL RESPONSE (WRIT OF HABEAS CORPUS)

TO THE RESPONDENT, THE PEOPLE OF THE STATE OF CALIFORNIA:

Petitioner Xavier Dmitri Nailing is currently serving a sentence of two years in state prison for second degree robbery. Petitioner is currently serving out his sentence at Avenal State Prison.

On November 17, 2016, Petitioner pleaded guilty to second degree robbery (Pen. Code, § 211). The imposition of his sentence was suspended, and he was placed on formal probation for five years. One of the conditions of probation was that he serve 261 days in county jail. Petitioner was awarded credit for 261 days in custody consisting of 131 days actual custody and 130 days good time/work time.

On July 10, 2017, Petitioner admitted to a violation of probation. Probation was revoked and terminated, and Petitioner was sentenced to two years in state prison. Petitioner was given 226 days of custody credit, consisting of 197 actual days and 29 conduct days. It is unclear from the record why Petitioner was awarded fewer conduct credits at the time he was sentenced to state prison than at the time he was placed on probation.

On February 22, 2018, Petitioner filed the instant petition for writ of habeas corpus. Petitioner contends that he is entitled to additional presentence credits based on the fact that he was awarded 261 days of credit in 2016 when he was placed on probation, but was awarded only 226 days of credit when he received his prison sentence. In support of his contention, Petitioner cites Penal Code section 2900.5. Penal Code section 2900.5, subdivision (a), states that in "all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, including, but not limited to, any time spent in a jail, . . . all days of custody of the defendant, including days served as a condition of probation in compliance with a court order . . . shall be credited upon his or her term of imprisonment"

Accordingly, Respondent is requested to file an informal response addressing the issue of whether Petitioner is entitled to additional presentence credits towards his prison sentence, for the 261 days awarded in 2016, which satisfied a condition of his probation before it was revoked and terminated. Unless otherwise ordered by this court, the informal response shall be filed within 15 days from the date of service of this order. (Cal. Rules of Court, rule 4.551(b)(1).) Petitioner will then have 15 days from the date of service of the informal response to file a reply to the response. (Cal. Rules of Court, rule 4.551(b)(2).) The matter will be deemed submitted following the filing of Petitioner's informal reply, or the 15-day period provided for filing a reply has expired. (Cal. Rules of Court, rule 4.551(b)(3).)

Exhibit B

JACKIE LACEY
District Attorney of Los Angeles County
By: BROCK LUNSFORD for EVELIS DEGARMO
Deputy District Attorney
POST-CONVICTION LITIGATION AND DISCOVERY DIVISION
320 W TEMPLE STREET RM. 540
LOS ANGELES, CA 90012
(213) 974-5914

Attorney for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

v.

XAVIER D. NAILING, CDCR#: BD-7608

Defendants(s).

CASE NO. BA441591

*SUBPOENA DUCES TECUM
APPLICATION FOR
SUBPOENA DUCES TECUM
CRIMINAL*

THE PEOPLE OF THE STATE OF CALIFORNIA TO (ROBIN BOCCIELLA) CUSTODIAN OF RECORDS,
Avenal State Prison, P.O. Box 8 Avenal, California 93204 fax no. (559) 386-2337.

You are commanded to attend a session of the Superior Court of California, County of Los Angeles, to be held at the CENTRAL DISTRICT, in Department 100, a courtroom, located at 210 W. TEMPLE ST., ROOM 13-307, LOS ANGELES, CA 90012, County of Los Angeles May 2, 2018 at 8:00 a.m., then and there to testify as a witness in this action on the part of Plaintiff and that you then and there produce the documents now in your custody or under your control, described in the copy of the application for subpoena duces tecum attached hereto which is incorporated herein by reference.

You must appear at the time unless you make a special agreement to appear another time, etc., with:
EVELIS DEGARMO, Deputy District Attorney, at phone number (562) 247-2029.

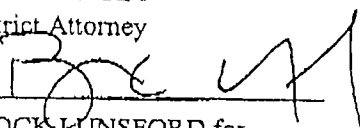
Failure to appear on the date set forth herein or at such other time or upon such notice as may have been agreed to with the party at whose request this subpoena was issued may be punished as contempt by this court. You may also be liable for the sum of five hundred dollars and all damages to such party resulting from your failure to attend. (Penal Code Section 1331, 1331.5)

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED BY A FINE, IMPRISONMENT, OR BOTH. A WARRANT MAY BE ISSUED FOR YOUR ARREST IF YOU FAIL TO APPEAR.

DATED: April 12, 2018



Respectfully Submitted,
JACKIE LACEY
District Attorney

By: 
BROCK LUNSFORD for
EVELIS DEGARMO
Deputy District Attorney

APPLICATION FOR SUBPOENA DUCES TECUM

STATE OF CALIFORNIA, County of Los Angeles

The undersigned states: That he/she is attorney of record for the People of the State of California in the above-titled action; that said cause was duly set down for discovery compliance on May 2, 2018 at 08:00 AM, in Department 100 of the above-entitled Court.

That Custodian of Records, ROBIN BOCCELLA has in his/her possession or under his/her control the documents attached to this subpoena duces tecum as Exhibit 1 for the following inmate:

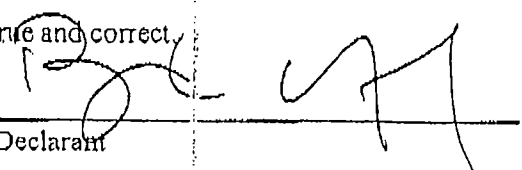
XAVIER DIMITRI NAILING, CDCR NO. BD-7608.

That the above documents are material to the issues involved in the case by reason of the following facts:

Needed to determine if the defendant poses an unreasonable risk to public safety pursuant to a resentencing provided by Penal Code section 1170.126.

Executed April 12, 2018, at LOS ANGELES, California.

I declare under penalty of perjury that the foregoing is true and correct.


Declarant

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles

I, the undersigned state that: I served the foregoing subpoena by showing the original and delivering a true copy thereof, together with a copy of the application in support thereof, to each of the following named persons:

I declare under penalty of perjury that the foregoing is true and correct.

Executed _____, at _____, California.

Declarant

EXHIBIT LIST *People v. Xavier Nailing*, Case No. BA441591

INMATE: XAVIER DIMITRI NAILING, CDCR NO. BD-7608

The complete CDC 112 Chronological History;

All the following documents from July 28, 2017 to present:

- Institution Staff Recommendations;
- Abstract of Judgment;
- Court of Appeal Opinion (published or unpublished)
- CDC 804;
- CDC 115 without accompanying 837;
- CDC 128-A;
- CDC 128-G;
- CDC 840 Classification scores;
- CDC 101, Work Report;
- CDC 114-D, except for Placement in Administration Segregation for protective custody or out to court;
- CDC 128-B related to volunteer work, support groups, self-help, general chrono related to laudatory, and any certificates earned and negative behaviors;
- CDC 128-B2; 128-E;
- CDC 812, Notice of Critical Case Information Form;
- CDC 1030;
- CDC 128-C for mental health placement

COPY

JACKIE LACEY, District Attorney of Los Angeles County
BRIAN SCHIRN, Head Deputy, Post Conviction Litigation & Discovery
JUDITH PETTIGREW, Deputy-In-Charge
EVELIS M. DE GARMO, State Bar No. 186473
Habeas Corpus Litigation Team
320 W. Temple Street, Suite 540
Los Angeles, California 90012
Phone: (562) 247-2029
edegarmo@da.lacounty.gov
Attorneys for Respondent

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

Case No.: BA441591 (BH011621)

In re XAVIER DMITRI NAILING,
On Habeas Corpus,

REQUEST FOR EXTENSION OF TIME TO
FILE INFORMAL RESPONSE

**TO THE HONORABLE WILLIAM C. RYAN, JUDGE, DEPARTMENT 100,
CENTRAL DISTRICT, AND TO PETITIONER, XAVIER DMITRI NAILING:**

The People of the State of California, real party in interest (Respondent) in the above-entitled case, by their counsel, Jackie Lacey, District Attorney of Los Angeles County, hereby request that the time for filing the informal response in this matter be extended to June 15, 2018. This request is based upon the attached Declaration of Deputy District Attorney Evelis De Garmo, the attached Points and Authorities, and all records of this case on file with the court.

Dated: April 12, 2018

Respectfully submitted,

JACKIE LACEY
District Attorney of Los Angeles County

By:



EVELIS DE GARMO
Deputy District Attorney
Habeas Corpus Litigation Team

JACKIE LACEY, District Attorney of Los Angeles County
EVELIS DE GARMO, State Bar No. 186,473
Deputy District Attorney
Post-Conviction and Litigation Division
Third Strike Resentencing Unit
320 West Temple Street, 540
Los Angeles, CA 90012
562-247-2029
Attorneys for People and Respondent

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER
CRIMINAL WRITS CENTER**

PEOPLE OF THE STATE OF CALIFORNIA)	Case No. BA441591 (BH011621)
)	
Plaintiff and Respondent,)	PROOF OF SERVICE FOR
v.)	EXTENTION OF TIME
)	
XAVIER NAILING,)	
)	
Defendant and Petitioner.)	

**TO THE HONORABLE WILLIAM C. RYAN, JUDGE, CJC WRITS, SUPERIOR
COURT OF THE STATE OF CALIFORNIA AND TO PETITIONER:**

The undersigned declares under the penalty of perjury that the following is true and correct: I am over eighteen years of age, not a party to the within cause, Xavier Nailing, and I am employed in the Office of the District Attorney of Los Angeles County with offices at 320 W. Temple Street, Ste. 540, Los Angeles, California 90012. On the date of execution below, I served the attached document: Request for Extension of Time, by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, for

1 collection in the United States mail by the County of Los Angeles, California, addressed as
2 follows:
3

4 XAVIER NAILING
5 FACILITY D
6 P.O. BOX 904
7 AVENAL, CA 93204

8 Executed on April 13, 2018, at Los Angeles, California.

9 Jacqueline Acoves
10 Jacqueline Acoves
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DECLARATION OF EVELIS DE GARMO

1
2
3 1. I am an attorney-at-law licensed to practice in all courts of the State of California and
4 am employed as a Deputy District Attorney of the Habeas Corpus Litigation Team ("HABLIT") for
5 the Los Angeles County District Attorney's Office (LADA).

6 2. XAVIER DMITRI NAILING has filed a petition in the Los Angeles County
7 Superior Court, Central District, Department 100.

8 3. In order to respond to the Petition for Writ of Habeas Corpus, it will be necessary to
9 secure copies of the District Attorney's file, the Court of Appeals records and opinion(s), Court and
10 Reporter's Transcripts, Attorney General records and any additional documentation as may become
11 relevant to this proceeding. Petitioner has raised a Credit Error claim. The requested date allows
12 time for Respondent to order and receive the relevant court documents.

13 4. I request an extension of time until June 15, 2018 to submit the informal response. If
14 I am able to complete the informal response prior to this date, I will file the matter upon completion
15 prior to June 15, 2018.

16
17 Executed on April 12, 2018, at Los Angeles, California.

18
19 

20 EVELIS DE GARMO
21 Deputy District Attorney
22 Habeas Corpus Litigation Unit
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Exhibit C

STATE OF CALIFORNIA
Calculation Worksheet - Determinate (DSL)
CDCR 1897-U (08/17) Access Version

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
Worksheet No. _____ of _____
(use multiple worksheets for mixed credit codes)



CALCULATION WORKSHEET -- **DETERMINE (DSL)**

A4 Legend - Vesting%: 15 = Divide by 5.66 20 = Divide by 4 33.3 = Divide by 2 50 = Divide by 1	A11 Legend - Earning%: 15 = Divide by 6.66 20 = Divide by 5 33.3 = Divide by 3 50 = Divide by 2	B7 Legend - Earning%: 15 = Divide by 6.66 20 WG A1/A2/B/D1/M/U = Divide by 5 33.3 WG A1/A2/B/D1/U Divide by 3 50 WG A1/A2/B/D1/U Divide by 2	20 WG F = Divide by 2 33.3 WG F = Divide by 3 then Multiply by 2 50 WG F/M = Divide by 3 then Multiply by 2
---	--	---	---

Section A - Original EPRD Calculation		Case Number(s): BA441591	
This is the initial EPRD calculation that is done upon reception. Unless there is a change in work group, additional credits earned and/or credit losses, the EPRD remains throughout the term.			
Credit Earning % : 20	Vested Credit %: 20		
A1. Start Date	07/28/2017	A7. Minus Day Before Start Date (Line A1)	07/27/2017
A2. Plus Time Imposed	+ 2 YRS 0 MO	A8. Equals Days to Serve	484
	= 07/28/2019	A9. Minus Dead Time (A5)	0
A3. Minus Pre & Post Sentence Credit	- 226 PRE 17 PST	A10. Equals Days where credit may be applied	484
	= 11/27/2018	A11. CDCR Good Conduct Credit (GCC)	96
A4. Minus Vested Credit Divide Line A3 PST Per A4 Legend Above	- 4	Divide Line A10 Per A11 Legend (Round Down, PC2931 One-Third calculations, Round Up)	
	= 11/23/2018		
A5. +Dead Time/-Merit Credit	+ 0 DT - 0 MC		
A6. Equals Maximum Date If change in work group, credit loss, Reeves, MCC etc., or Carry Over stop here and proceed to Section B.	= 11/23/2018	A12. Maximum Date (Line A6)	11/23/2018
		A13. - CDCR GCC (Line A11)	96
		A14. Equals Original EPRD	08/19/2018

INMATE COPY

Section B - Recalculation of EPRD (change in credit earning status, credit loss/credit restoration, etc.)				
Accumulation of CDCR GCC for days previously earned and projected future credit. Record fractional amounts of credit (2 decimal pts.) apply whole amounts only;				
B1. Maximum Date (Line A6)	=	11/23/2018	B9. Maximum Date (Line B1)	11/23/2018
B2. Minus CDCR GCC Earned Section D w/fractions or Section G (Line G9)	-	0.25	B10. Minus Total CDCR GCC (Line B8, Drop Decimals)	96
B3. Plus Net Credit Loss (E1) (Leave blank if PC2931 One-Third)	+	0	B11. Plus Net Credit Loss (E1)	
B4. Equals Current Release Date (CRD)* (PC2931 One-Third carry date to B15)	=	11/23/2018	B12. Plus MCC Loss (E2)	
B5. Minus Date Credit Applied Through (Section D only)	-	07/28/2017	B13. Plus RAC Loss (E3)	
B6. Equals Days Remaining To Serve as of date credit applied	=	483	B14. Plus Net Credit Loss (E4)	
Divide Line B6 Per B7 Legend Above to Project CDCR GCC	C-Earnings / WG ► =	20-A1	B15. (B9 +/- B10 thru B14)	8/19/2018
B7. Equals Projected GCC	=	96.6	B16. Minus MCC (F1)	28
Accumulate Fractional Credit			B17. Plus MCC Loss (E5 or G10)	
Line B2 0.25 (w/fractions)			B18. Minus RAC (F2)	0
+			B19. Plus RAC Loss (E6 or G11)	
Line B7 96.6 (w/fractions)			B20. (B15 +/- B16 thru B19)	07/22/2018
B8. Equals Total CDCR GCC	=	96.85	(B9 or B20. Whichever is Earlier)	7/22/2018
			B21. Minus EMC (F3)	0
			B22. Minus ECC (F4)	0
			B23. Equals Adjusted EPRD	7/22/2018

*The CRD is an intermediate date and may exceed the Maximum Date; however, the Adjusted EPRD cannot exceed the Maximum Date.

CALCULATED BY (Name & Title)	K. Bigoni, CCRA		DATE 12/28/2017
INMATE'S NAME NAILING, XAVIER	CDCR NUMBER BD7608	LOCATION ASP	

Version 4.6.1.1

Release Note

Summary Accommodations Movement Bed Inventory ADA/EC History

Generate Reports / Get Help / Report a Problem Log Out

CDC #: BD7608

Search

CDC Number: BD7608, NAILING, XAVIER DIMITRI

Summary

Offender/Placement

CDC #: **BD7608** [Other]
 Name: **NAILING, XAVIER DIMITRI**
 Institution: **Wasco State Prison**
 Bed Code: **H 004 1000143UP**
 Placement Score: **19**
 Custody Level:
 Housing Pgm: **RC - Receipt Ctr**
 Housing Restrictions:
 Physical Limitations to Job/Other:

Disability/Assistance

DDP Code: **NCF**
 Effective Date: **08/01/2017**
 DPP Codes: [History]
 1845 Date:
 MHSDS Code: **CCCMS**
 SLI:
 Primary Method:
 Alternate Method:
 Learning Disability:
 TABE Score: **5.3**
 TABE Date: **09/01/2017**
 Durable Medical Equipment: [Info]
 Last Accommod:
 Spoken Languages:

Important Dates

Pending Revocation: **No**
 Revocation Date:
 Date Received in CDCR: **07/28/2017**
 Last Return Date:
 Extended Stay Date: **10/26/2017**
 Extended Stay Privileges?
 Release Date: **07/22/2018**
 120 Day Date: **03/24/2018**
 Next IDST Date:

Work/Vocation/PIA

1
 Group Priv: **U**
 Group Work: **U**
 Start Date: **09/11/2017**
 Status: **Voluntary**
 Job Position: **VA2.101.005**
 Job Title: **H VOLUNTARY - ABE II**
 IWTIP Code: **K**
 IWTIP Description:
 Regular Day Off: **SU, S**
 Work Hours: **0800-1600**

Accommodation History

No Accommodation Records Found.

Inmate Name: NAILING, XAVIER D.	CDC #: BD7608	DOB: 09/11/1969
Facility: WSP-Facility H [WSP-H]	Housing: H 004 1-000143U	CCRA: D. Harrison
PC2933 Eligible: No	MCC/RAC/EMC/ECC Eligible: Yes	CCI: J. Actis
		PRCS Eligible: No

You have been committed to the CDCR to serve the following sentences.

Sentencing Overview	Total Term: 2y 0m 0d	Overall Max Date: 11/23/2018
Term Start Date: 07/28/2017	Control Date Type: EPRD	
Control Date: 07/22/2018	Time Remaining: 300 days	As of Date: 09/25/2017
Time Served: 306 days		

Other Parole Eligibility Dates
Non-Violent Parole Eligibility Date (NPED):
Second Strike Parole Eligibility Date (SPED):
Youth Offender Parole Eligibility Date (YPED):
Elderly Parole Eligibility Date (EPED): 12/26/2041

Sentence Structure					
Cmt.	County	Sentence Date	Total Time Imposed	Status	Status Date
DA	Los Angeles	07/10/2017	2y 0m 0d	Imposed	07/10/2017

Sentence Components (1 - 1 of 1)											
Cmp.	Count	County/Case #	Crime (Statute)	Offense	Offense Date	Time Imposed	Relationship to Cmt./Cmp.	Credit Rate	Pre-Snt Credit	Post-Snt Credit	Vested Credit
001	01	Los Angeles/BA441591	PC212.5(c)[02]	Robbery 2nd	11/17/2015	2y 0m 0d		15%/20% Violent	226	17	4

COMMENTS: None	19 p/s - II
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Legal Mandates (1 - 1 of 1)				
Cmt./Cmp.	Mandate Type	Begin Date	Due Date	Status
DA-001	Notification Req'd - Violent Felon (PC3058.6)	07/28/2017		Required

Dead Time			
Began	Ended	Days	Type
No Rows Found			

CDCR Credits Received/Lost (1 - 3 of 3)								
Entry Date	Effective Date	Type	Work Group	Duration (days)	Recd/Lost Days	Reason	Status	Qualifier
09/25/2017	09/22/2017	Milestone Completion Credit (MCC)			28	School	Applied	Course # M010B07
08/03/2017	08/03/2017	Work Group Change (done by Cls.)	U - Unclassified	53		Classification Action	Applied	
08/03/2017	07/28/2017	Work Group Change (done by Cls.)	D1 - Administrative Segregation	6		Classification Action	Applied	

Financial Obligations (1 - 2 of 2)				
Commitment	Court	Case Number	Account Type	Amount Ordered
DA	Los Angeles Co Superior Court-Los Angeles(Central)	BA441591	Restitution Fine (PC 1202.4)	\$350.00
DA	Los Angeles Co Superior Court-Los Angeles(Central)	BA441591	Restitution Fine (PC 1202.45)	\$350.00

Active Detainers/Notifications					
Date Placed	Type	Reason	Agency Name	Detainer/Case #	Offense
No Rows Found					

Legend: (The dates shown above are subject to change.)

Exhibit C

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**DEPT 100**

Date:	May 01, 2018	Judge	S. KADOHATA	Deputy Clerk
Honorable:	WILLIAM C. RYAN	Bailiff	NONE	Reporter
(Parties and Counsel checked if present)				
BH011621 (L.A.S.C. Case No. BA441591)				
In re, XAVIER DMITRI NAILING,				
Petitioner,			Counsel for Petitioner:	
On Habeas Corpus			Counsel for Respondent:	

Nature of Proceedings: ORDER RE: OBJECTION TO REQUEST FOR EXTENSION OF TIME

IN CHAMBERS

Objection to Respondent's request for extension of time by Petitioner Xavier Dmitri Nailing, *pro se*. Respondent, the People of the State of California ("People"), represented by Deputy District Attorney Evelis De Garmo. Denied.

BACKGROUND

On November 17, 2016, Petitioner pleaded guilty to second degree robbery (Pen. Code, § 211). The imposition of his sentence was suspended, and he was placed on formal probation for five years. One of the conditions of probation was that he serve 261 days in county jail. Petitioner was awarded credit for 261 days in custody consisting of 131 days actual custody and 130 days good time/work time.

On July 10, 2017, Petitioner admitted to a violation of probation. Probation was revoked and terminated, and Petitioner was sentenced to two years in state prison. Petitioner was given 226 days of custody credit, consisting of 197 actual days and 29 conduct days. It is unclear from the record why Petitioner was awarded fewer conduct credits at the time he was sentenced to state prison than at the time he was placed on probation.

On February 22, 2018, Petitioner filed a petition for writ of habeas corpus with this court, contending that he is entitled to additional presentence credits based on the fact that he was awarded 261 days of credit in 2016 when he was placed on probation, but was awarded only 226 days of credit when he received his prison sentence. On April 4, 2018, this court requested an informal response from Respondent addressing the issue of whether Petitioner is entitled to additional presentence credits towards his prison sentence. On April 13, 2018, Respondent requested an extension of time to file the informal response, citing the need to examine various transcripts and records, including some in the possession of the Court of Appeal and the Office of the Attorney General. On April 16, 2018, this court granted the extension of time to file the informal response up to and including June 15, 2018.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**DEPT 100**

Date: May 01, 2018

Honorable: WILLIAM C. RYAN

Judge S. KADOHATA

Deputy Clerk

NONE

Bailiff NONE

Reporter

(Parties and Counsel checked if present)

BH011621

(L.A.S.C. Case No. BA441591)

In re,

XAVIER DMITRI NAILING,

Counsel for Petitioner:

Petitioner,

Counsel for Respondent:

On Habeas Corpus

On April 23, 2018, Petitioner filed a “notice motion in amicus curiae” explaining that he received a copy of a subpoena duces tecum, and requesting an amended abstract of judgment reflecting a total of 332 days of presentence credits and 17 days of postsentence credits. On April 24, 2018, Petitioner filed an objection to Respondent’s request for an extension of time to file the informal response, alleging that he will be falsely imprisoned if he remains in custody beyond April 20, 2018. The court considers both the objection and the motion in this order, as they both concern Petitioner’s pending petition for writ of habeas corpus.

DISCUSSIONMotion in Amicus Curiae

Petitioner states in his “motion in amicus curiae,” that he is in receipt of a subpoena duces tecum for Robin Boccella and for records in possession of the California Department of Corrections and Rehabilitation (“CDCR”), for May 2, 2018, in Dept. 100. Petitioner alleges that the subpoena states that the documents are “needed to determine if the defendant poses an unreasonable risk to public safety pursuant to a resentencing provided by Penal Code sect. 1170.126.” Petitioner alleges that the subpoena duces tecum is signed by Deputy District Attorney Brock Lunsford and that the requested items are needed for resentencing under Penal Code section 1170.126 (“Proposition 36”).

Petitioner has not petitioned for resentencing pursuant to Proposition 36. Petitioner asserts, correctly, that he is not serving an indeterminate life term and therefore is not eligible for resentencing pursuant to Proposition 36. Petitioner states: “It is unclear of the true intention of Brock Lunsford and Evelis De Garmo.” (*Sic.*) Although the court recently received documents from the CDCR in response to a subpoena duces tecum issued by Deputy District Attorney Brock Lunsford on behalf of Deputy District Attorney Evelis De Garmo, no mention is made of Proposition 36. Petitioner has not included a copy of the subpoena he allegedly received.

Petitioner’s request for an amended abstract of judgment to correct presentence credits is successive, as his pending habeas petition concerns the calculation of his presentence credits. (*In re Clark* (1993) 5 Cal.4th 750, 770, superseded by Proposition 66 on other grounds as stated in *Briggs v. Brown* (2017) 3 Cal.5th 808,

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**DEPT 100**

Date:	May 01, 2018	Judge	S. KADOHATA	Deputy Clerk
Honorable:	WILLIAM C. RYAN	Bailiff	NONE	Reporter
	NONE			

(Parties and Counsel checked if present)

BH011621
(L.A.S.C. Case No. BA441591)

In re,
XAVIER DMITRI NAILING,

Counsel for Petitioner:

Petitioner,

Counsel for Respondent:

On Habeas Corpus

quoting *In re Horowitz* (1949) 33 Cal.2d 534, 546–547 [“petitioner cannot be allowed to present his reasons against the validity of the judgment against him piecemeal by successive proceedings for the same general purpose”].) Successive petitions waste scarce judicial resources, requiring the court to repeatedly review the record in order to assess the merits of the petitioner’s claims. (*Ibid.*) Petitioner fails to justify the reason for his successive petition. (*In re Reno* (2012) 55 Cal.4th 428, 455; *In re Clark, supra*, at p. 798, fn. 35.)

Objection to Extension of Time

Petitioner objects to Respondent’s request for an extension of time to file the informal response. He asserts that he will be over-detained and subjected to false imprisonment if the extension is granted. Petitioner contends that as of April 20, 2018, he is being over-detained.

Petitioner contends that he is entitled to 332 days of presentence credits. Petitioner was sentenced to two years in state prison on July 10, 2017. Even if Petitioner had been awarded 332 days of presentence credits, it is not clear that he would be over-detained as of June 15, 2018 (the day the informal response is currently due), much less as of April 20, 2018.

The court has requested an informal response on the issue of Petitioner’s presentence credits. Respondent has a right to respond to the court’s request. In order to respond to the court’s request, Respondent requires documents not currently in their possession. An extension of time is required in this case in order to allow Respondent the time necessary to gather the documents needed to comply with the court’s request for an informal response.

The informal response is currently due on June 15, 2018. The court understands Petitioner’s desire to resolve this matter as quickly as possible, and will entertain no further requests for extension of time to file the informal response.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**DEPT 100**

Date: May 01, 2018

Honorable: WILLIAM C. RYAN

Judge S. KADOHATA

Deputy Clerk

NONE

Bailiff NONE

Reporter

(Parties and Counsel checked if present)

BH011621
(L.A.S.C. Case No. BA441591)In re,
XAVIER DMITRI NAILING,

Counsel for Petitioner:

Petitioner,

Counsel for Respondent:

On Habeas Corpus

DISPOSITION

For all of the foregoing reasons, the objection to the request for extension of time and the “motion in amicus curiae” are DENIED.

The Clerk is ordered to serve a copy of this order upon Petitioner, and upon Deputy District Attorney Evelis De Garmo, as counsel for Respondent, the People of the State of California.

The court order is signed and filed this date.

A true copy of this minute order is sent via U.S. Mail to the following parties:

Petitioner

Xavier Dmitri Nailing, #BD7608
Facility D
P.O. Box 904
Avenal, CA 93204

Respondent's Counsel

Office of the District Attorney
Post-Conviction Litigation & Discovery Division
Habeas Corpus Litigation Team
320 W. Temple St., Rm. 540
Los Angeles, CA 90012
Attn: Evelis De Garmo, Deputy District Attorney



THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL, TRUE
AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.
SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES.

Attested: MAY 03 2018 BY: G. ALONZO DEPUTY

Xavier Naiting B07608
410-2-2 up
P.O. Box 904
Avenal, CA. 93204

LEGAL MAIL

MAY 17 2018

AVENAL STATE PRISON
MAILROOM



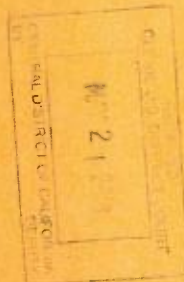
California Department
of Corrections and Rehabilitation



LEGAL MATERIAL

Legal Mail

UNITED STATES DISTRICT COURT
Office of The Clerk
U.S. Court House, Room G-8
LOS ANGELES, CA 90012





T. M. S.

5-16-18